

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. HWCA20071472
)	
Mantrex, Inc.)	
dba WIT Sales and Refining)	
538 Phelan Avenue)	CONSENT ORDER
San Jose, California 95112)	
EPA ID No. CAD 980 888 598)	
(Santa Clara County))	
)	Health and Safety Code
Respondent.)	Section 25187

The California Department of Toxic Substances Control (Department) and Mantrex, Inc., a California Corporation, doing business as WIT Sales and Refining, (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent generates, handles, treats, and stores hazardous waste at 538 Phelan Avenue, San Jose, California 94710 (Site) in Santa Clara County.

2. The Department inspected the Site on January 30, 2007 and February 2, 2007; and conducted a Financial Responsibility Review on April 2, 2007.

3. The Department alleges the following violations:

3.1. The Respondent violated Health and Safety Code, section 25202(a), California Code of Regulations, title 22, section 66270.30(a), and Hazardous Waste Facility Permit (HWFP), Parts I.6(b), II.1 and III in that, Respondent accepted hazardous wastes that were not authorized in the Hazardous Waste Facility Permit, to wit:

a. On or about February 5, 2004, Respondent received 15 gallons of waste corrosive palladium solution, waste codes 792 and F007, accompanied by manifest no. 99776269. This waste was observed in Storage Area 1 on January 30, 2007.

1 b. On or about April 7, 2004, Respondent received 10 gallons of waste
2 corrosive platinum solution, waste codes 792, 131, and F007, accompanied by
3 manifest no. 99776289. This waste was observed in Storage Area 1 on January 30,
4 2007.

5 c. On or about March 5, 2004, Respondent received 200 pounds of waste
6 toxic, solid, filter media with trace amounts of gold cyanide, waste codes 181 and
7 F008, accompanied by manifest no. 23004769.

8 d. On or about May 14, 2004, Respondent received 30 gallons of waste
9 potassium iodide aqueous solution, waste codes 132 and F003, accompanied by
10 manifest no. 99776294.

11 e. On or about June 19, 2004, Respondent received 24 gallons of waste
12 corrosive liquid platinum solution, waste codes 792 and F007, accompanied by
13 manifest no. 99776302.

14 f. On or about June 19, 2004, Respondent received 41 pounds of waste
15 solid filter with platinum, waste codes 792 and F007, accompanied by manifest no.
16 99776302. .

17 g. On or about September 9, 2005, Respondent received 15 gallons of
18 waste corrosive solution (platinum), waste codes 792, 131 and F007, accompanied
19 by manifest no. 99776385.

20 h. On or about September 21, 2005, Respondent received 7 gallons of
21 waste iodine aqueous solution, waste codes 132 and F003, accompanied by
22 manifest no. 99776399.

23 i. On or about February 10, 2006, Respondent received 1 gallon of
24 waste iodine aqueous solution, wastes codes 132 and F003, accompanied by
25 manifest no. 24804411.

26 j. On or about March 22, 2006, Respondent received 40 gallons of waste
27 corrosive potassium iodine solution with gold, waste codes 792 and D002,
28 accompanied by manifest no. 24804414.

1 k. On or about January 31, 2008, Respondent received 7 pounds of
2 waste cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest
3 no. 001112942 JJK.

4 l. On or about March 17, 2008, Respondent received 10 pounds of waste
5 cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest no.
6 001112949 JJK.

7 m. On or about March 25, 2008, Respondent received 10 pounds of waste
8 cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest no.
9 001112950 JJK.

10 n. On or about April 23, 2008, Respondent received 10 pounds of
11 waste cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest
12 no. 001112952 JJK.

13 o. On or about June 21, 2008, Respondent received 41 pounds of waste
14 cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest no.
15 001112960 JJK.

16 p. On or about July 4, 2008, Respondent received 13 pounds of waste
17 cyanide solids, inorganic, waste codes 181, F007, accompanied by manifest no.
18 001241005 FLE.

19 3.2. The Respondent violated Health and Safety Code, section 25202(a)
20 and California Code of Regulations, title 22, section 66270.30 (a), and HWFP, Parts
21 I.6 (b), II.1 and III in that, Respondent conducted treatment of hazardous wastes not
22 authorized in the HWFP, to wit:

23 a. On or about February 22, 2007, Respondent treated 10 gallons of
24 hazardous waste corrosive platinum solution by neutralizing the waste with caustic
25 soda. The treated platinum solutions was placed in a 55-gallon drum and shipped
26 off-site.

27 b. On or about February 22, 2007, Respondent treated 15 gallons of
28 hazardous waste corrosive palladium solution, by neutralizing the waste with caustic

1 soda. The treated palladium solution was placed in a 55-gallon drum and shipped
2 off-site.

3 c. On or about June 21, 2004, Respondent treated 24 gallons of
4 hazardous waste corrosive liquid platinum solution by using an electrolytic plate-out
5 process.

6 d. On or about September 14, 2005, Respondent treated 15 gallons of
7 waste corrosive solution (platinum) was treated by using an electrolytic plate-out
8 process.

9 e. On or about March 24, 2006, Respondent treated 40 gallons of waste
10 corrosive liquid (potassium iodine), by using an electrolytic plate-out process.

11 f. On or about May 19, 2004, Respondent treated 30 gallons of waste
12 potassium iodide solution by using an electrolytic plate-out process.

13 g. On or about September 27, 2005, Respondent treated 7 gallons of
14 hazardous waste iodine solution, by using an electrolytic plate-out process.

15 h. On or about February 26, 2006, Respondent treated 1 gallon of
16 hazardous waste iodine solution by using an electrolytic plate-out process.

17 3.3. The Respondent violated Health and Safety Code, section 25163 (a)
18 (1) in that, on or about November 14, 20, and 30, 2006, December 6 and 15, 2006
19 and January 11, 2007, Respondent engaged in the transportation of hazardous
20 wastes without holding a valid hazardous waste registration issued by the
21 Department.

22 3.4. The Respondent violated California Code of Regulations, title 22,
23 section 66264.15(d) in that, on or about January 30, 2007, Respondent failed to
24 record in an inspection log or summary, two containers of unacceptable waste
25 streams (hazardous waste corrosive platinum and palladium solutions) that were
26 stored in Storage Area 1. The wastes had been stored for over two and a half years.
27 In addition, one container was unlabeled.
28

1 3.5. Respondent violated California Code of Regulations, title 22, section
2 66264.15(b)(1), (3) and (4), in that on or about January 30, 2007, Respondent failed
3 to include in the written inspection schedule the following: inspection of monitoring
4 equipment, safety and emergency equipment such as fire extinguishers, safety
5 shower and eyewash; inspection of containers to check for leakage and
6 deterioration; inspection of above ground portions of tank systems to detect for
7 corrosion or releases of waste; inspection of construction materials and the area
8 surrounding the tank system including secondary containment system to check for
9 corrosion, erosion or signs of releases.

10 3.6. Respondent violated California Code of Regulations, title 22, section
11 66262.42(a) and (b), in that on or about June 1, 2006, Respondent failed to submit
12 to the Department an Exception Report when Respondent has not received a copy
13 of manifest no.25133956, with the handwritten signature of the owner/operator within
14 45 days from the date the waste was shipped off-site.

15 3.7 Respondent violated California Code of Regulations, title 22, section
16 66264.16 (d), in that on or about January 30, 2007, Respondent failed to develop
17 and maintain the following documents and records at the facility, to wit:

18 a. The job title for each position at the facility related to hazardous waste
19 management and the name of the employee filling each job;

20 b. A written job description for each position;

21 c. A written description of the type and amount of both introductory and
22 continuing training that will be given to each person filling a position; and

23 d. Records that document that the required training or job experience has
24 been given to and completed by facility personnel.

25 3.8. Respondent violated California Code of Regulations, title 22, section
26 66264.73(b)(1) and (2), in that on or about January 30, 2007, the facility failed to
27 maintain an operating record that contains: a description and the quantity of each
28 hazardous waste received, and the method(s) and date(s) of its transfer, treatment,

1 storage, or disposal at the facility; and the location of each hazardous wastes within
2 the facility and the quantity at each location.

3 3.9. Respondent violated California Code of Regulations, title 22, section
4 66264.142(b), in that on or about April 7, 2005, and April 7, 2006, Respondent failed
5 to adjust its closure cost estimates for inflation. Respondent's failure to adjust the
6 closure cost estimates caused its Financial Assurance, a Certificate of Deposit, to be
7 underfunded by four thousand, three hundred seventy-eight dollars and thirty-four
8 cents (\$4,378.34).

9 3.10. Respondent violated California Code of Regulations, title 22, section
10 66264.147(a)(1)(D), in that on or about April 2, 2007, Respondent failed to submit to
11 the Department a Certificate of Insurance containing original signatures and wording
12 identical to the wording specified in California Code of Regulations, title 22, section
13 66264.151(j).

14 3.11. Respondent violated California Code of Regulations, title 22, section
15 66264.147(a)(1)(B) in that Respondent failed to submit to the Department copies of
16 the insurance policy as requested on September 30, 2004, March 15, 2007 and April
17 2, 2007.

18 4. A dispute exists regarding the alleged violations.

19 5. The parties wish to avoid the expense of litigation and to ensure prompt
20 compliance.

21 6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
22 Section 25187 of the Health and Safety Code authorizes the Department to order
23 action necessary to correct violations and assess a penalty when the Department
24 determines that any person has violated specified provisions of the Health and
25 Safety Code or any permit, rule, regulation, standard, or requirement issued or
26 adopted pursuant thereto.

27 7. Respondent waives any right to a hearing in this matter.
28

1 8. This Order shall constitute full settlement of the violations alleged above,
2 but does not limit the Department from taking appropriate enforcement action
3 concerning other violations.

4 SCHEDULE FOR COMPLIANCE

5 9. Respondent shall comply with the following:

6 9.1.1. Respondent shipped under manifest all remaining unlawfully accepted
7 waste noted in paragraph 3.1 to Noranda and Xstrata (formerly Noranda), and has
8 also returned to compliance on violations in paragraphs 3.3., and 3.6., 3.9., 3.10.,
9 and 3.11.

10 9.1.2. Respondent shall ensure that hazardous wastes accepted, stored and
11 treated are authorized in accordance with the terms and conditions of its Hazardous
12 Waste Facility Permit. Respondent shall also maintain and complete the records
13 listed in this Schedule for Compliance at the facility in accordance with this Order,
14 update them as needed, and make these records available to local, state, and
15 federal officials upon request.

16 9.1.3. Respondent certifies that it returned to compliance when Respondent:

17 a) Ceased any unauthorized treatment of hazardous waste noted in
18 paragraph 3.2;

19 b) Stated on July 23, 2007 and July 23, 2008 that it accurately and fully
20 completed the inspection logs noted in paragraph 3.4; and

21 c) Presently accurately and fully completes the operating records noted in
22 paragraph 3.8 as a standard operating practice.

23 9.1.4. On October 28, 2008, Respondent submitted a revised Personnel
24 Training Plan and Inspection Schedule as required follow-up to paragraphs 3.5 and
25 3.7. The Department has reviewed and responded to the submittal in a letter sent to
26 the Respondent on March 13, 2009. Respondent shall revise both documents as
27 specified in that letter, and submit them to the Department for review and approval
28 within 45 days from the Effective Date of this Order.

1 9.1.5. Within 90 days after the Department's review and acceptance of the
2 revised training plan required in 9.1.4., Respondent shall submit documentation that
3 the training courses identified in the revised training plan have been completed by
4 the owner/operator and employee(s). Training documentation shall include the
5 name(s) of company or person who provided the training.

6 9.1.6. Within 15 days after the Department's review and acceptance of the
7 revised Inspection schedule, Respondent shall conduct inspections based on the
8 revised inspection schedule.

9 9.2. Submittals: All submittals from Respondent pursuant to this Order shall
10 be sent to:

11 Ms. Luz Castillo
12 Senior Hazardous Substances Scientist
13 State Oversight and Emergency Response Branch
14 Department of Toxic Substances Control
15 700 Heinz Avenue
16 Berkeley, California 94710

17 9.3. Communications: All approvals and decisions of the Department made
18 regarding such submittals and notifications shall be communicated to Respondent in
19 writing by a Performance Manager, Department of Toxic Substances Control, or
20 his/her designee. No informal advice, guidance, suggestions, or comments by the
21 Department regarding reports, plans, specifications, schedules, or any other writings
22 by Respondent shall be construed to relieve Respondent of its obligation to obtain
23 such formal approvals as may be required.

24 9.4. Department Review and Approval: If the Department determines that
25 any report, plan, schedule, or other document submitted for approval pursuant to this
26 Order fails to comply with the Order or fails to protect public health or safety or the
27 environment, the Department may return the document to Respondent with
28 recommended changes and a date by which Respondent must submit to the
Department a revised document incorporating the recommended changes.

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1 9.5. Compliance with Applicable Laws: Respondent shall carry out this Order
2 in compliance with all local, State, and federal requirements, including but not limited
3 to requirements to obtain permits and to assure worker safety.

4 9.6. Endangerment during Implementation: In the event that the Department
5 determines that any circumstances or activity (whether or not pursued in compliance
6 with this Order) are creating an imminent or substantial endangerment to the health
7 or welfare of people on the site or in the surrounding area or to the environment, the
8 Department may order Respondent to stop further implementation for such period of
9 time as needed to abate the endangerment. Any deadline in this Order directly
10 affected by a Stop Work Order under this section shall be extended for the term of
11 such Stop Work Order.

12 9.7. Liability: Nothing in this Order shall constitute or be construed as a
13 satisfaction or release from liability for any conditions or claims arising as a result of
14 past, current, or future operations of Respondent, except as provided in this Order.
15 Notwithstanding compliance with the terms of this Order, Respondent may be
16 required to take further actions as are necessary to protect public health or welfare
17 or the environment.

18 9.8. Site Access: Access to the Site shall be provided at all reasonable times
19 to employees, contractors, and consultants of the Department, and any agency
20 having jurisdiction. Nothing in this Order is intended to limit in any way the right of
21 entry or inspection that any agency may otherwise have by operation of any law.
22 The Department and its authorized representatives may enter and move freely about
23 all property at the Site at all reasonable times for purposes including but not limited
24 to: inspecting records, operating logs, and contracts relating to the Site; reviewing
25 the progress of Respondent in carrying out the terms of this Order; and conducting
26 such tests as the Department may deem necessary. Respondent shall permit such
27 persons to inspect and copy all records, documents, and other writings, including all
28

1 sampling and monitoring data, in any way pertaining to work undertaken pursuant to
2 this Order.

3 9.9. Sampling, Data, and Document Availability: Respondent shall permit the
4 Department and its authorized representatives to inspect and copy all sampling,
5 testing, monitoring, and other data generated by Respondent or on Respondent's
6 behalf in any way pertaining to work undertaken pursuant to this Order. Respondent
7 shall allow the Department and its authorized representatives to take duplicates of
8 any samples collected by Respondent pursuant to this Order. Respondent shall
9 maintain a central depository of the data, reports, and other documents prepared
10 pursuant to this Order. All such data, reports, and other documents shall be
11 preserved by Respondent for a minimum of six years after the conclusion of all
12 activities under this Order. If the Department requests that some or all of these
13 documents be preserved for a longer period of time, Respondent shall either comply
14 with that request, deliver the documents to the Department, or permit the
15 Department to copy the documents prior to destruction. Respondent shall notify the
16 Department in writing at least six months prior to destroying any documents
17 prepared pursuant to this Order.

18 9.10. Government Liabilities: The State of California shall not be liable for
19 injuries or damages to persons or property resulting from acts or omissions by
20 Respondent or related parties specified in paragraph 12.3, in carrying out activities
21 pursuant to this Order, nor shall the State of California be held as a party to any
22 contract entered into by Respondent or its agents in carrying out activities pursuant
23 to this Order.

24 9.11. Incorporation of Plans and Reports: All plans, schedules, and reports
25 that require Department approval and are submitted by Respondent pursuant to this
26 Order are incorporated in this Order upon approval by the Department.

27 9.12. Extension Requests: If Respondent is unable to perform any activity or
28 submit any document within the time required under this Order, the Respondent

1 may, prior to expiration of the time, request an extension of time in writing. The
2 extension request shall include a justification for the delay.

3 9.13. Extension Approvals: If the Department determines that good cause
4 exists for an extension, it will grant the request and specify in writing a new
5 compliance schedule.

6 PAYMENTS

7 10. Respondent shall pay the Department a total of FIFTY-THREE
8 THOUSAND, SIX HUNDRED FORTY DOLLARS AND NO CENTS \$(53,640.00), in
9 administrative penalties by April 16, 2011 according to the terms and conditions
10 specified below:

11 10.1. Respondent shall make an initial payment of \$24,000 on or
12 before April 16, 2009. If this amount is paid timely, \$12,540.00 of this amount
13 may be characterized as a reimbursement of the Department's costs. The
14 remaining balance of \$29,640.00 shall be paid in no more than eight (8)
15 quarterly payments of \$3,705.00. One quarterly payment is due on or before
16 each of the following eight (8) dates.

17 July 5, 2009	April 5, 2010	January 5, 2011
18 October 5, 2009	July 5, 2010	and
19 January 5, 2010	October 5, 2010	April 5, 2011.

20 10.2. In the event that any payment is not received at the address set forth
21 below on or before the twelfth (12th) day of the month in which it is due, the entire
22 remaining balance shall become due and payable immediately.

23 10.3. Each of Respondent's checks shall be made payable to Department of
24 Toxic Substances Control, shall clearly note the Docket number (HWCA20071472)
25 of this matter on its face, and shall be delivered together with a copy of the attached
26 Payment Voucher (Exhibit A, incorporated by this reference) to:

27 Department of Toxic Substances Control
28 Accounting Office
1001 I Street, MS-21A

1 P. O. Box 806
2 Sacramento, California 95812-0806

3 A photocopy of the check shall be sent:

4 To: Luz T. Castillo
5 Senior Hazardous Substances Scientist
6 State Oversight and Emergency Response Branch
7 Department of Toxic Substances Control
8 700 Heinz Avenue
9 Berkeley, California 94710

10 To: Erika Giorgi
11 Staff Counsel
12 Office of Legal Counsel
13 Department of Toxic Substances Control
14 1001 I Street, MS-23A
15 P. O. Box 806
16 Sacramento, California 95812-0806

17 10.4. If Respondent fails to make payment as provided above, Respondent
18 agrees to pay interest at the rate established pursuant to Health and Safety Code
19 section 25360.1 and to pay all costs incurred by the Department in pursuing
20 collection including attorney's fees.

21 OTHER PROVISIONS

22 11.1. Additional Enforcement Actions: By agreeing to this Order, the
23 Department does not waive the right to take further enforcement actions, except to
24 the extent provided in this Order.

25 11.2. Penalties for Noncompliance: Failure to comply with the terms of this
26 Order may subject Respondent to civil penalties and/or punitive damages for any
27 costs incurred by the Department or other government agencies as a result of such
28 failure, as provided by Health and Safety Code section 25188 and other applicable
provisions of law.

11.3. Parties Bound: This Order shall apply to and be binding upon
Respondent and its officers, directors, agents, receivers, trustees, employees,
contractors, consultants, successors, and assignees, including but not limited to

1 individuals, partners, and subsidiary and parent corporations, and upon the
2 Department and any successor agency that may have responsibility for and
3 jurisdiction over the subject matter of this Order.

4 11.4. Effective Date: The effective date of this Order is the date it is signed
5 by the Department.

6 11.5. Integration: This Order constitutes the entire agreement between the
7 parties and may not be amended, supplemented, or modified, except as provided in
8 this Order.

9 11.6. Compliance with Waste Discharge Requirements: Respondent shall
10 comply with all applicable waste discharge requirements issued by the State Water
11 Resources Control Board or a California regional water quality control board.

12 **AGREED:**

13
14 Date: 3/30/09



15
16 Fred Rex, President
17 Mantrex, Inc., doing business as
18 WIT Sales and Refining
Respondent

19 **AGREED AND ORDERED:**

20
21
22 Date: 9 Apr 09



23 Charles A. McLaughlin
24 Performance Manager
25 State Oversight and Enforcement Branch
26 Enforcement and Emergency Response Program
27 Department of Toxic Substances Control
28